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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,223	10/16/2003	Stephen G. Dick	I-2-0427.1US	9473
24374 7590 11/12/2008 VOLPE AND KOENIG, P.C. DEPT. ICC UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103				
EXAMINER ALAM, FAYYAZ				
ART UNIT 2618		PAPER NUMBER		
MAIL DATE 11/12/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/688,223

Applicant(s)

DICK ET AL.

Examiner

FAYYAZ ALAM

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 39-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

This action is in response to applicant's amendment/arguments filed on 9/30/2008. **This action is made FINAL.**

Response to Arguments

Applicant's arguments filed 9/30/2008 have been fully considered but they are not persuasive.

Applicant argues on pg. 5 that that the base station is read as a network unit and later the base station is read as WTRU.

While it is true that such a read was made, but such language was in two separate independent claims and one of which is no cancelled. Therefore, the interpretation would have been then and still is due to the breadth of the limitation.

Applicant argues that the references fail to disclose "shared channel target metric generator...".

Examiner respectfully disagrees.

Dominique clearly discloses a shared channel target metric generator configured to output a respective updated power threshold for secondary channel (read as UL SCH target metric) derived from a current established power threshold level for associated primary channel (read as target metric computed for the UL DCH associated with the UL SCH) (see col. 8, lines 44 - 58).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, motivation is in the knowledge of one of ordinary skill in the art, where power control for a shared channel is controlled separately from that of a Dedicated channel because the requirement and use of the two channels are different.

Please see rejection below of claims 39 and 42.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 39 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Willenegger et al. (PCT Publication # WO02/065667)** in view of **Dominique et al. (USPN 6,400,960)** and further in view of **Vanghi (USPN 6,711,150)**.

Consider **claims 39 and 42**, Willenegger et al. disclose a base station (104) (read as serving wireless transmit receive unit) and a method for implementing transmission power control for user terminals (106) (read as other WTRUs) where user data is signaled to the base station (104) (read as serving WTRU) by the user terminals (106) (read as other WTRUs) in both uplink shared channels available to unspecified user terminals (106) (read as WTRUs) and dedicated UL channels that are assigned for use by a specific user terminal (106) (read as WTRU) in which the specific user terminal (106) transmits data signals on an uplink dedicated channel and sporadically transmits data signals on an associated uplink shared channel (note: the invention as disclosed in

the prior art is for downlink power control and is also applicable to uplink power control as stated in the specification; see pg. 7 lines 20 - 33; pg. 12, lines 22 - 27), the base station (104) (read as serving WTRU) comprising:

a receiver for receiving UL user data from user terminals (106) (read as WTRUs) on UL DCHs and at least one UL SCH (since a base station would inherently have a receiver and transmitter for communications with user terminals and as disclosed the two communication channels are DCH and SCH associated with a particular user terminal; see pg. 7, lines 20 - 33; pg. 12, lines 22 - 27; fig. 1); and

a processor for computing target metric or signal quality for UL DCHs based on the reception of signals transmitted by a WTRU on an UL DCH associated with an UL SCH usable by the WTRU (since power control for downlink channels is disclosed as an example but the invention can be applied to uplink power control (see p. 12, lines 22-27) where a base station or a network unit would compute the target metric instead of the user terminal for uplink power control (see pg. 8, lines 25 - 29));

a shared channel target metric generator configured to output a respective UL SCH target metric derived from computed UL DCH target metric (since power control according to the prior art is done independently on each channel (see pg. 8, lines 21 - 24) by a base station (104) based on signal quality measurement or target metric computation of the channel associated with the channel to be power controlled (see pg. 8, lines 29 - 33)).

However, Willenegger discloses all the limitations but does not explicitly disclose a shared channel target metric generator configured to output a respective UL SCH

target metric derived from a target metric computed for the UL DCH associated with the UL SCH.

In the related field of endeavor, Dominique discloses a shared channel target metric generator (inherently) configured to output a respective updated power threshold for secondary channel (read as UL SCH target metric) derived from a current established power threshold level for associated primary channel (read as target metric computed for the UL DCH associated with the UL SCH) (see col. 8, lines 44 - 58).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Willenegger with the teachings of Dominique in order to provide power control in a given channel during times of discontinuous transmission, where a primary and a secondary channel exist.

However, Willenegger as modified by Dominique does not explicitly disclose using the metric in computing UL channel power adjustments by the other WTRU.

In the related field of endeavor, Vanghi discloses using the target SNR (read as metric) in computing UL channel power increase or decrease (read as adjustments) by the mobile station (read as other WTRU) (see col. 4, lines 40 - 56).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Willenegger and Dominique with the teachings of Vanghi in order to provide power control for a mobile station and to adjust power based on when a quality metric has been determined.

Consider **claims 32 and 43** as applied to respective claims, Willenegger et al. disclose the target metrics are target signal-to-noise-plus-interference ratios or SNRs

(read as SIRs) and the communication system is a Universal Mobile Telecommunications System or UMTS (since the invention as disclosed in the prior art is applicable to other standards as well; see pg. 8, lines 19 - 21; pg. 12, lines 24 - 27).

Consider **claims 33 and 44** as applied to respective claims, Willenegger et al. disclose the UMTS has open loop transmission power control for WTRU transmissions and the SCHs for which SCH target SNRs (read as SIRs) are generated are for high data rate packet transmission (read as High Speed Shared Information Channels) which operate in conjunction with High Speed Downlink Shared Channels wherein (see pg. 7, lines 26 - 28): said base station (104) (read as network unit) is a UMTS Terrestrial Radio Access Network that includes a transmitter configured to transmit TPC commands that are indicative of DCH and HS-SICH target SNRs (read as SIRs) (see pg. 10, lines 1 - 7); and said user terminals (106) (read as WTRUs) each include a receiver configured to receive respective DCH and HS-SISCH target SNRs (read as SIRs) such that the user terminal's (read as WTRU's) processor computes transmit power (read as power adjustments) based on the received TPC command that are indicative of the DCH and HS-SICH target SNRs (read as SIRs) (see pg. 10, lines 1 - 17; fig. 1).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fayyaz Alam whose telephone number is (571) 270-1102. The Examiner can normally be reached on Monday-Friday from 9:30am to 7:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

Fayyaz Alam

November 3, 2008

/Edward Urban/

Supervisory Patent Examiner, Art Unit 2618